No. 807

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, A. D. 1941

~~315 U.S. 801~~

315 U.S. #19

SOL FEINBERG,
Petitioner,

vs.

FEI-GLA

UNITED STATES OF AMERICA,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT, AND BRIEF IN SUPPORT THEREOF.

EVERETT JENNINGS,
Chicago, Ill.,
Counsel for Petitioner.

GEORGE D. SULLIVAN,
PAUL CRAIG,
Of Counsel.

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INDEX.

	PAGE
Petition for writ of certiorari	1
A. Summary statement of the matter involved	1
B. Reasons relied upon for the issuance of the writ	3
Prayer for writ	5
Brief in support of petition	7
Opinion of the court below	7
Jurisdiction	7
Statement of the case	7
Specification of errors	11
Argument:	13
Jurisdiction	13
The Circuit Court of Appeals erred in approving the said instruction given by the trial court herein	14
The Circuit Court of Appeals erred in not holding that it was erroneous for the trial court to permit the introduction in evidence of minor conspiracies and criminal acts with which petitioner was not identified or in any manner connected	15
The evidence does not support the verdict	18
The verdict is opposed to the law and the evidence	18
The Circuit Court of Appeals (Tr. 204) erred in not reversing the case because the trial court denied the motion of petitioner, at the close of all the evidence on the trial, for a directed verdict of not guilty	19
Conclusion	20

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PAGE

Table of Cases Cited.

Cameron v. U. S., 231 U. S. 710, 716 13

Edgington v. U. S., 164 U. S. 361, 366; 41 L. Ed. 467, 471 ..... 4, 13

Maguum Import Co. v. DeSpoturno, 262 U. S. 159, 163; 67 L. Ed. 922, 924 13

Marcante v. U. S., 49 F. (2d) 156, 157 ..... 4, 16

Miller v. U. S., 120 F. (2d) 968, 972 ..... 3, 4, 13

Salinger v. U. S., 23 F. (2d) 48, 52 ..... 3, 13, 14

Sunderland v. U. S., 19 F. (2d) 202, 215 14

Terry v. U. S., 7 F. (2d) 28, 30 ..... 4, 16

U. S. v. Beck, 118 F. (2d) 178, 182 ..... 4, 16

U. S. v. Wills, 36 F. (2d) 855, 857 ..... 4, 16

Wyatt v. U. S., 23 F. (2d) 791, 792 ..... 4, 16, 17

Judicial Code.

Sec. 240 13

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UNITED STATES OF AMERICA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT, AND BRIEF IN SUPPORT THEREOF.

To the Chief Justice and Associate Justices of the Supreme Court of the United States:

The petition of Sol Feinberg respectfully shows to this Honorable Court:

A.

Summary Statement of the Matter Involved.

Petitioner Sol Feinberg on May 2, 1941, was indicted with the following persons, viz.: Emma Ludwig, Stanley Hoy, Manuel Menendaz, Mamie Doe, Chester Doe, James

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Throughout this Petition, inadvertently, we have referred to the record with the abbreviation (Tr.). This error was not discovered until the Petition was set in type. We respectfully ask the court's indulgence.

T. Lewis, Lucille Williams, Austin Edge, Henry Driscoll, Harry Decker, James Tillman, Eddie Doe, Art Schultz, John Bridges and Foster Mosley.

The indictment contains thirty-two counts. The first fifteen counts (Tr. 2-15) charge the unlawful sale of narcotics in violation of Internal Revenue Code No. 53 (Secs. 2553-A, 2554-A). Counts sixteen to thirty-one (Tr. 15-29) inclusive, charge fraudulently receiving, concealing, buying and facilitating the transportation of narcotics after unlawful importation thereof in violation of the Narcotic Drugs Import and Export Act, 21 U.S.C.A. 174. Count thirty-two (Tr. 29-33) charges a conspiracy to violate the said Narcotic Drugs Import and Export Act, 18 U.S.C.A. 88.

All the counts, except count seventeen (Tr. 16-17) and count thirty-two (Tr. 29-33) were withdrawn from the jury in the case against the said Sol Feinberg.

The jury found him guilty of a violation of the said two counts. The court sentenced him to the penitentiary for a period of two years and to pay a fine in the sum of two hundred fifty dollars ($250.00).

The case was appealed to the United States Circuit Court of Appeals for the Seventh Circuit, where the judgment of the District Court was affirmed.

Count thirty-two, the conspiracy count (Tr. 29-30) after the usual introductory allegations in which the defendants are named and the division and district stated, charges that:

> "On and between, to wit, May 15, 1939, and April 11, 1941, at Chicago, aforesaid, in the division and district aforesaid, then and there knowingly, unlawfully, wilfully and feloniously did conspire, combine, confederate, and agree together, and with divers other persons, whose names are to the said grand jurors unknown, to commit divers offenses, against the United

States, that is to say, the offense of unlawfully receiving, concealing, buying, selling and facilitating the transportation and concealment of large quantities of certain derivatives of opium, to wit, morphine and codeine mixture and heroin hydrochloride, the exact amounts of which are to the said grand jurors unknown, after being imported into the United States contrary to law, knowing the same to have been imported contrary to law; all such receiving, concealing, buying, selling and facilitating the transportation and concealment of said morphine and codeine mixture and heroin hydrochloride being in violation of the Act of Congress approved May 26, 1922, and known as the Narcotic Drugs Import and Export Act."

Count seventeen (Tr. 16-17) charged that the defendants, on March 11, 1941, did knowingly and fraudulently receive, conceal, buy and facilitate the transportation and concealment after importation of a large quantity of a certain derivative of opium, to wit, 395 grains of heroin hydrochloride, knowing the same to be unlawfully imported into the United States.

B.

Reasons Relied Upon for the Issuance of the Writ.

Petitioner respectfully suggests the following reasons:

The ruling of the Circuit Court of Appeals for the Seventh Circuit in its approval of the instruction just quoted in the instant case (Tr. 189), on the weight to be accorded by the jury to character testimony in favor of a defendant, conflicts with the holding upon that subject of the Circuit Court of Appeals for the Eighth Circuit.

Miller v. *U. S.*, 120 F. (2d) 968, 972.
Salinger v. *U. S.*, 23 F. (2d) 48, 52.

The said instruction is erroneous.

1. Because it was too narrow and did not explain to the jury the purpose and function of such evidence, and was in conflict with the applicable decisions of this court.

   Edgington v. *U. S.*, 164 U. S. 361, 366; 41 L. Ed. 467, 471.
   Miller v. *U. S.*, 120 F. (2d) 968, 972.

2. Because it omitted any reference to the evidence of petitioner's good reputation for truth and veracity, and instructed the jury only regarding the evidence of his good reputation for being a peaceful law abiding citizen.

The Circuit Court of Appeals should have reversed the case because the trial court did not at the end of all the evidence in the case grant said Feinberg's motion that the indictment be dismissed and for a directed verdict of not guilty as to said Feinberg.

The trial court erred in admitting in evidence proof of different and disconnected minor conspiracies and criminal acts with which petitioner was not identified or in any manner connected, as is shown by the testimony of Austin Edge (Tr. 95), Eddy Jackson (Tr. 104), Earl Nettles (Tr. 107), James Tillman (Tr. 110), Margaret Stein (Tr. 112), Ruford Kelley (Tr. 113), Helen West (Tr. 116), Sarah Walker (Tr. 118), Glen Howard (Tr. 121), Mabel Jones (Tr. 124), Allyn B. Crisler (Tr. 126), Joseph V. Walsh (Tr. 129), and Dorothy Sullivan (Tr. 37).

Marcante v. *U. S.*, 49 F. (2d) 156, 157.
Wyatt v. *U. S.*, 23 F. (2d) 791, 792.
U. S. v. *Wills*, 36 F. (2d) 855, 857.
Terry v. *U. S.*, 7 F. (2d) 28, 30.
U. S. v. *Beck*, 118 F. (2d) 178, 182.

That a variance between the indictment and the proof resulted from the introduction of evidence of said disconnected matters.

The Evidence Does Not Support the Verdict.

The Verdict Is Opposed to the Law and the Evidence.

Wherefore your petitioner respectfully prays that a writ of certiorari be issued out of this Honorable Court, directed to the United States Circuit Court of Appeals for the Seventh Circuit, directing that Court to certify and send to this Court for its review and determination on a day certain to be therein named, a full and complete transcript of the record and all proceedings in the case as numbered and entered on its docket, and that the said judgment of the said Circuit Court of Appeals may be reversed by this Honorable Court, and that your petitioner may have such other and further relief in the premises as to this Honorable Court may seem meet and just.

SOL FEINBERG,
Petitioner.

EVERETT JENNINGS
Counsel for Petitioner.

GEORGE D. SULLIVAN,
PAUL CRAIG,
Of Counsel.

STATE OF ILLINOIS }
COUNTY OF COOK } ss.

Everett Jennings, being first duly sworn, says that he is counsel for Sol Feinberg, the petitioner; that he participated in the preparation of the foregoing petition, and that the allegations thereof are true as he verily believes.

EVERETT JENNINGS

Subscribed and sworn to before me this 19th day of December, A.D., 1941.

IRMA FISHER,
Notary Public.

(Seal)